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Current Topics.

THE HOUSE OF LORDS.

WHILE the House of Lords in its judicial capacity is normally constituted of five peers, this number was recently augmented to seven to consider a point of the Scots law of divorce on the ground of desertion. Additional interest has been given to the sitting for two reasons: First, for the return of Lord Macmillan, who was for some years a Lord of Appeal in Ordinary but resigned on taking a non-political place in a former Cabinet. On retiring from that post he, as a peer who had held high judicial office, was, of course, entitled to resume attendance to share in the appellate work of the House but until now he has not done so. Doubtless his return was on the invitation of the Lord Chancellor as he had special knowledge of the Scots law on the subject under discussion. The second point of interest was the first appearance in the House in its appellate capacity of Lord Merriman, who, as President of the Probate and Divorce Division, possesses a special knowledge of this branch of law, notwithstanding the numerous points of divergence between the laws of the two countries.

STATUTES AND "BASIC ENGLISH."

FURTHER to our note in the issue of 17th May on "Explaining the Law" (*ante*, p. 227), it is interesting to see that the question of the intelligibility or otherwise of Acts of Parliament has now been directly raised in the House of Commons, where most of those Acts have their *fons et origo*. On 27th May Mr. A. Edwards asked the Prime Minister if he would have all Acts of Parliament written in basic English. Mr. Churchill replied, "No, Sir." Mr. Edwards persisted and asked whether the Prime Minister did not think that it would be a great saving of time and money if, after the official draftsmen had done their best or their worst with the Bills, they were then translated into more understandable English; and whether he would contemplate the calamity that might befall us if those draftsmen were to take his own speeches as a model. Mr. Churchill replied that there was a great deal of official jargon but it had not been arrived at with a view to causing inconvenience, but because those who were entrusted with expressing the views and decisions of the House in statutory form had found that to be the most convenient and precise method. The Prime Minister thought that it was a very sensible idea to try to describe everything in basic English but pointed out that the word "basic" like the word "basal" was under great suspicion, and quoted "Fowler's Dictionary of Modern English Usage." On Mr. Edwards persisting in his question as to whether some improvement could be made, an honourable member suggested that he should start by making speeches in basic English. This remark, we respectfully suggest, goes to the root of the matter. As "basic English" severely limits its own vocabulary, it necessarily uses the same word to indicate more than one meaning in different contexts. Members do not make their speeches in basic English because, if they did, the speeches would probably bear a different meaning when printed than when spoken, where they have the assistance of inflexion and gesture. Clearly, in cases where precision is important for the purpose of saving legal costs, as in statute-making, the fewer the words used, however apparently simple and monosyllabic they may be, may add to the beauty and apparent lucidity of the style but on the other hand may encourage litigious persons who will inevitably seek to make two meanings grow where only one was intended.

WAR DAMAGE (BUSINESS SCHEME).

A FURTHER Order under Pt. II of the War Damage Act, 1941, was made by the Board of Trade on 19th May (The War Damage (Business Scheme) (No. 2) Order, S.R. & O., 1941, No. 699). It provides a compulsory form of policy for voluntary hospitals in respect of their medical and surgical instruments and appliances, electrical apparatus, for medical or surgical purposes, scientific and laboratory equipment, drugs and dressings, and radon, radium and radium needles. With respect to radon, radium and radium needles the liability of the Board is limited to £5,000. The Order also gives the option to all persons insuring under the Business Scheme to choose that the period of insurance specified in the policy shall end on 30th September instead of on 15th June or 15th August, if either of those dates next follows after the date of the policy. The premiums are adjusted for persons making this election, so that if the policy is issued on or before 15th June the rate is one and a half per cent. of the sum insured or thirty shillings, whichever is the greater, and if it is issued between 15th June and 16th August the rate is one per cent. of the sum insured or one pound, whichever is the greater. It is also worth noting that growing trees are added to the list of goods in para. 6 (2) of the first Business Scheme Order, which are not required to be insured under the Business Scheme. In para. 6 (2) (*a*) and (*b*) the following goods are expressly specified *inter alia* as goods which a person is required to insure under the Business Scheme should his total insurable goods exceed £1,000, viz., goods which he is under an obligation to repair or replace if they should sustain war damage, or in respect of which he is under an obligation to pay compensation or damages in that event; and goods owned by the insured which another person is under an obligation to repair or replace if they should sustain war damage or in respect of which another person is under an obligation to pay damages or compensation in that event (being in either case an obligation arising under a bailment). For the words "war damage" the new Order substitutes the words "loss by war or damage by war" within the meaning applied to those terms by the Liability for War Damage (Miscellaneous Provisions) Act, 1939.

WAR DAMAGE AND PUBLIC UTILITY UNDERTAKINGS.

IT will be recalled that s. 40 of the War Damage Act, 1941, expressly left open as a matter for future legislation the provision of a contributory scheme of war damage compensation for public utility companies as there defined. In the House of Commons on 29th May, in answer to a question as to when he expected to be able to introduce such legislation, the Chancellor of the Exchequer replied that it was a complicated matter, and a good deal of time had been needed for its examination. He had now framed the general lines of a scheme, but before he could usefully introduce legislation he should need to assure himself of the practicability of certain aspects of it and to obtain information from representatives of public utility undertakings on a variety of technical matters. A short statement of the scheme in outline was circulated in the Official Report. The statement said that it was proposed, in the case of public utility undertakings, that both immovable and movable property should be included in a single scheme to be administered by the War Damage Commission. There would be cost of repair and cost of replacement payments, and also value payments where by reason of redundancy or for other reasons

an asset which has been damaged beyond repair is not replaced at all. There is also to be provision for payment of outlay on temporary measures pending replacement or repair. With regard to contributions, it is proposed that the aggregate contributions of the members of each group of public utility undertakings should be fifty per cent. of the estimated aggregate war damage payments to members of the group, and should be payable in four annual instalments, of which the first would be due on 1st July, 1942. Possible reductions of this rate might be granted after the war to any groups, having regard to the damage suffered. Each group is to make a scheme for dividing the group contribution among its members, to be submitted to the Treasury. Examination is not complete of other cases than public utilities, referred to in s. 40 of the War Damage Act as being those valued for rating on a basis of accounts, receipts, profits or output. It is intended in general that these undertakings shall be dealt with on the basis of the War Damage Act, but where appropriate, provisions on the lines of the scheme for public utility undertakings will be applied. In some cases there will have to be modifications of Pt. I of the War Damage Act. Mines and similar undertakings may require special treatment on the contribution side, as existing valuations represent in large measure the value of unworked minerals beneath the surface which are not at risk. The statement shows evidence of careful planning, and with the assistance of the public utility companies and the constructive criticism of the House of Commons there should be little fear as to the earliest possible return after the war to normal conditions of the essential services of our civilised existence.

REGISTRATION OF STORAGE SPACE.

A FAR-REACHING Order made by the Board of Trade on 14th May (1941, S.R. & O. No. 670) required owners of premises in Great Britain of which the floor area is 3,000 square feet or more and which have at any time since 1st January, 1938, been used wholly or mainly for storage of articles of any description, to provide certain information with respect to those premises. The information had to be furnished in writing on a form issued by the Controller-General of Factory and Storage Premises and should have been sent on or before the 2nd June, 1941, to the Registrar of Factory and Storage Premises, Board of Trade, Millbank, London, S.W.1. It will be observed that so long as the premises have at some time since 1st January, 1938, been used wholly or mainly for storage and the required floor space is reached or exceeded, the owner must register. Certain premises, however, are excepted from the operation of the Order in a Schedule. These include premises owned by public utility undertakings (not road or water transport undertakings and local authorities), premises owned and occupied by a road or water transport undertaking and used wholly for the storage of articles in transit or articles necessary for the proper maintenance of the undertaking, premises used wholly for cold storage, bulk storage of liquids and bulk storage of grain, public warehouses in the vicinity of a port in respect of which the Minister of Transport has set up a Port Emergency Committee, premises used wholly or mainly in connection with a factory which are situated within one mile from the factory; premises used in connection with a retail business and forming an integral part of other premises used wholly or mainly for the purposes of that business, and agricultural buildings within the meaning of the Rating and Valuation (Apportionment) Act, 1928. The expression "articles" does not include vehicles or vessels, and the expression "premises" means any building or structure, and any number of separate premises which belong to one owner and are situated within an area of one quarter of a square mile are to be treated as parts of the same premises. The Order clearly extends to the owners of private dwelling-houses and offices, if the houses or offices are of the requisite floor space and have at any time since 1st January, 1938, been used wholly or mainly for storage. Whether landlords will be able to obtain the necessary particulars as to occasions when houses within the statutory area of one quarter of a square mile have been used wholly or mainly for storage remains to be seen.

BILLETING OFFENCES.

IN a Memorandum on Proceedings issued by the Ministry of Health to local authorities as an enclosure to Circular 2375, certain observations are made which may be of assistance to Clerks of Reception Authorities and Chief Billeting Officers in connection with prosecutions under reg. 22 of the Defence (General) Regulations, 1939. It is pointed out that under reg. 93 proceedings for offences against reg. 22 can only be instituted either by a constable or by or with the consent of the Director of Public Prosecutions. Where the police authorities are unwilling to intervene, the evidence may be submitted to the Director, who is not empowered to give a general consent to prosecutions being instituted by local authorities or their officers, but would require to consider the facts of the particular case. With regard to difficulties as to who should be considered to be the occupier, where, for example, the wife of the rated occupier is the person to whom the billeting notice is addressed, the memorandum states that, having regard to the lack of definition of the word "occupier" in the regulations, the Minister would not exclude the possibility of a married woman whose husband was temporarily absent being held to be the occupier of the premises for the purpose of reg. 22. Readers may remember cases under the Defence Regulations where this has proved a difficulty, particularly under reg. 24 (2B) and the Lighting (Restrictions) Order, 1939. An examination of the authorities in an article on this subject in THE SOLICITORS' JOURNAL for 22nd June, 1940, revealed that "control" of premises was an essential element of occupation (Vol. 84, p. 387). The memorandum adds that in any court proceedings the billeting officer should be prepared to prove his appointment by production of the document signed by the mayor or chairman as the case may be, appointing him as a billeting officer. A print of Circular 1857 dated 27th August, 1939, under which the Minister delegated his power of appointing billeting officers, should be available, and if necessary the Ministry will supply a certified copy of the Circular, which will be a sufficient proof of the delegation, having regard to s. 7 of the Emergency Powers (Defence) Act, 1939. The Ministry also drew attention to *Mee* v. *Tone* [1940] 1 K.B. 638, and *White* v. *Hurrell's Stores, Ltd.* (*ante*, p. 38, and *The Times*, 20th January). It is also suggested that prosecutions might be considered where the accommodation provided is unsatisfactory owing to wilful acts of the occupier, for instance with regard to refusing access to water supply and sanitary conveniences. The inevitable petty friction that occasionally interferes with the smooth working of billeting schemes can usually be tactfully handled on the spot by the billeting officer, but the Memorandum is an assurance that every assistance will be forthcoming from the Ministry in dealing with the comparatively few recalcitrant cases.

TRUSTEE (WAR DAMAGE INSURANCE) BILL.

THE Government have introduced the Trustee (War Damage Insurance) Bill to establish that trustees have power to insure chattels comprised in the trust against war damage under Pt. II of the War Damage Act, 1941. It is understood that the Bill has been introduced in view of the doubts which have been expressed in certain quarters as to the existence of the necessary power to insure. The Bill will be retrospective in effect so as to cover the action which some trustees have already taken.

RECENT DECISIONS.

In *Fruin* v. *Linton* on 22nd May (*The Times*, 23rd May) a Divisional Court, consisting of the Lord Chief Justice, Humphreys and Singleton, JJ., held that it was not necessary to prove guilty knowledge in order to obtain a conviction under para. 42 (*e*) of the Rationing Order, 1939, which prohibits a person obtaining or using, or attempting to obtain or use any ration document when he has no right to obtain or use it.

In *Bomford* v. *Osborne* (Inspector of Taxes) on 27th May (*The Times*, 28th May), the House of Lords (the Lord Chancellor, Lord Maugham, Lord Russell of Killowen, Lord Wright and Lord Porter) held, reversing the decision of the Court of Appeal, that the mere fact that vegetables for human consumption were grown on part of a mixed farm did not justify a finding that that part of the farm was occupied as "a garden for the sale of the produce" within r. 8 of Sched. B of the Income Tax Act, 1918.

In *In re Budd* on 27th May (*The Times*, 28th May), a Divisional Court (Humphreys, Singleton and Tucker, JJ.) held that a writ of *habeas corpus* should be granted, and the applicant, who had been detained for eleven months in purported pursuance of reg. 18B (1) of the Defence (General) Regulations, 1939, should be released, as the order for the applicant's detention was an omnibus order authorising the detention of twenty-five different persons and made no mention whatever of the necessity to exercise control over the applicant, as required by reg. 18B (1).

In *In re Amand* on 23rd May (*The Times*, 24th May) a Divisional Court (The Lord Chief Justice, and Humphreys and Singleton, JJ.) refused an application for *habeas corpus* by a Dutch subject aged 34 who had joined the Netherlands forces as a conscript by virtue of calling-up papers issued to him on 8th and 16th August, 1940. The Court held that a decree by Queen Wilhelmina made in August, 1940, under which the applicant became a member of the Netherlands forces, was valid according to Netherlands law and applicable to him while resident in this country, and the Allied Forces Act, 1940, and an Order in Council, dated 11th October, 1940, authorised the arrest and detention of the applicant as a deserter.

In *Jelly* v. *Ilford Corporation*, on 29th May (*The Times*, 30th May), the Court of Appeal (MacKinnon and Luxmoore, L.J., and Stable, J.) dismissed an appeal from a judgment of Cassels, J., who had held that the plaintiff was guilty of contributory negligence and that the defendant corporation had statutory authority to erect a blast stack of sandbags outside an entrance to a public air-raid shelter which they had erected, and that therefore it did not constitute a nuisance. Luxmoore, L.J., was unable to agree that it was erected under statutory authority, and held that it was a nuisance, but that the plaintiff had been guilty of contributory negligence. The plaintiff had just emerged into the dark from a hairdresser's shop next door to the air-raid shelter and collided with the blast stack, which was neither painted nor whitewashed.

Sedition at Common Law.

In spite of the wide scope of the new offences against the public interest which have been created by the war legislation it is still sometimes found useful to prosecute for the ancient crime of sedition. Little is heard of this common law offence in peaceful and settled times but it retains its old vigour. The exact degree of that vigour is a matter of some doubt. A well-known authority states that "the definition of sedition is wide enough to cover almost any act of disaffection or disloyalty whether to Church or State" (Wade and Phillips' "Constitutional Law," 2nd ed., 376). This, however, is an exaggeration, as will be shown below, although in the old cases it is easy to find extravagant statements about what is seditious in word or writing. Even if it be said that the law of sedition has not been curtailed expressly, there have been changes in other parts of the law since the days of the Stuarts, and these changes have affected the law of sedition indirectly. "If you write on the subject of government, whether in terms of praise or censure, it is not material; for no man has a right to say anything of government": these are the words of Scroggs, C.J., and they were agreeable to his colleague on the bench, Mr. Recorder Jeffreys, later to be raised to the dignity of "Judge Jeffreys" (*R.* v. *Carr* (1680), 7 St. Tr. 929). But the report makes clear that they were relying on what they understood to be accepted law, namely, that unlicensed printing generally, whether or not seditious in tendency, was illegal. When Hawkins says (P.C., Bk. 1, c. 23) that what he calls a "contempt against the King's person or government" is committed by "charging the government with oppression or weak administration, as by saying, 'that merchants are screwed up here in England more than in Turkey,'" he is citing a Star Chamber case (*R.* v. *Chamber* (1630), C. Car. 168). The Star Chamber punished offenders for more indefinite reasons than did even the Stuart judges and for the present law of sedition we must turn to cases decided after the common law obtained exclusive control over the criminal law and after the freedom of the Press was established.

A seditious intention is of the essence of the offence and if the acts done or the words used were not done or used with such an intention the offence of sedition has not been committed: *R.* v. *Burns* (1886), 2 T.L.R. 510; 16 Cox C.C. 355, where the definition in Stephen's "Digest of Criminal Law" was accepted. But here, as always, the defendant is presumed to have intended the natural consequences of his acts. This presumption is applied as readily to cases of sedition as to others; it was applied, for example, by Littledale, J., in *R.* v. *Lovett* (1839), 9 C. & P. 462, 466. For this reason Coleridge, J.'s direction to the jury in *R.* v. *Aldred* [1909] 22 Cox 1; 74 J.P. 55, is not inconsistent with *R.* v. *Burns*, although he does not stress the intention of the defendant—the latter's seditious intention was obvious and his words could probably have been held to amount to direct incitement to violence. This is the most recent reported case on sedition and the direction of the judge is worth quoting though it is not concerned with all the possible forms of sedition. Coleridge, J., said:—

> "The man who is accused may not plead the truth of the statement that he makes as a defence to the charge; nor may he plead the innocence of his motive. That is not a defence to the charge. The test is not either the truth of the language or the innocence of the motive with which he published it. The test is this: was the language used calculated, or was it not, to promote public disorder or physical force?"

In this case the motive, patriotism, could be called a high one. The defendant was an Indian who in a newspaper advocated resort to political assassination and force with a view to liberating India from the government of the King. But the language was calculated, in the sense of likely, to promote certain consequences and these had to be taken to be intended.

As the nature of the intention may be evidenced by the character of the words, it is not very illuminating to say that a seditious intention is the essence of the offence. One must try to ascertain the kinds of acts and behaviour on the part of others, resulting, or likely to result, from the defendant's words or conduct, which are comprehended by sedition. In most of the cases there were also other charges in the indictment, such as criminal defamation, conspiracy and unlawful assembly, and it is not easy to unravel the law which bears solely on sedition. Further, most of the cases are assize decisions with the result that the legal issues are not expressed in very exact language. It has been thought that it is sedition if the following are promoted by the defendant:—

(1) *Constitutional changes by unlawful means.*

Several of the decisions relating to the Chartists in the eighteen-forties fall under this heading. The law was well stated by Wilde, C.J., in *R.* v. *Fussell* (1848), 6 St. T. (N.S.) 723; 3 Cox C.C. 291:

> "If the tenour of the discourse is to overthrow the government by violence, by resistance to the law, then, whether that government is good or bad, approved or disapproved, that is not justifiable . . . You will therefore consider what was the sort of overthrow to which the people were invited, whether it was an overthrow by resistance to the law and by tumult and violence, or by regular and constitutional means."

But it does not seem necessary that the unlawful means should be violent ones though apparently they must be criminal ones. In *R.* v. *Jones* (1848), 6 St. T. (N.S.) 793, it was held that a speech urging the people to form themselves into unlawful associations and inciting to unlawful assemblies, breaches of the peace, and the forcible obstruction of the execution of the law, was seditious; apparently the first two non-violent offences would have been sufficient without the addition of the two violent ones. And in *R.* v. *Cooper* (1843), 4 St. T. (N.S.) 1249; 1 L.T. (O.S.) 143, it seems to have been held sufficient to advocate a general strike, which was taken to be criminal, until the charter became law, though here also violent measures and tumults were a likely result of the defendant's words. *R.* v. *Aldred*, *supra*, is an extreme instance, for the defendant was responsible for a publication to Indian students in England, advocating the principle that political assassination is no murder and glorifying as a martyr in the cause of Indian independence an Indian student who murdered Sir Curzon Wyllie at a conversazione.

As Littledale, J., said in *R.* v. *Collins* (1839), 9 C. & P. 456, 461, every man has a right to give every public matter a candid, full and free discussion; something must be allowed for feeling in men's minds and for some warmth of expression, but an intention to incite the people to take the power into their own hands and to provoke them to tumult and disorder is a seditious intention.

(2) *Hatred of and disaffection against the King or the Government and constitution.*

It is said in textbooks and judgments that it is seditious if it is intended to bring into hatred or contempt the Sovereign or the government, the laws or constitution of the realm. It can be accepted that the Sovereign himself is so protected by the law of sedition which has served the purpose of supplementing the law of treason and criminal libel. It is implied in Lord Ellenborough, C.J.'s judgment in *R.* v. *Lambert* (1810), 2 Camp. 398; 31 St. T. 335, that statements about the King's own conduct are more easily seditious than those about his ministers. But Lord Ellenborough ruled that it was not criminal for a writer who concedes the Sovereign to be solicitous for the welfare of his subjects, and who has no intention of calumniating him or of bringing his personal government into odium, to express regret that he has taken an erroneous view of any question of foreign or domestic policy. So far as the King is concerned, the law of sedition has been coloured by the law of treason and defamation. Archbold says that "statements about the King which if published of subjects would be defamatory would appear to be regarded as seditious and incapable of justification," and he cites two Irish cases as authority.

But there would appear to be no clear case in which ministers of the crown or other public officials have been brought within the same principle. Old cases in which reflections on judges have been punished are in reality cases of contempt of court and are no precedent for the crime of sedition. And the other cases in which reflections on ministers of the crown have been the basis of a charge are, in the main, cases of criminal libel, for example, *R.* v. *Francklin* (1731), 17 St. T. 625. Lord Raymond, C.J., said that a private man's character is not to be scandalised, much less a minister of State's or other public person's; when he added that the law reckons it a greater offence when the libel is pointed at persons in a public capacity, as it is a reproach to the government to have corrupt magistrates, etc., substituted by His Majesty, and tends to sow sedition and disturb the peace, the Chief Justice was not expounding the law of sedition. Yet it is cases such as this which seem to have given rise to the notion that sedition is an offence which is indeterminately vague and repressive of criticism.

There seems to be no suggestion of a precedent for the view that extreme criticism of the constitution or any organ of government, unrelated to the personalities of public officials, can amount to sedition. But it may be that the Criminal Libel Act, 1819, s. 1, does by implication extend the common law to cover this second head.

(3) *Crimes in general disturbance of the peace.*

This heading differs from the first in that the breaches of the peace need not be committed with a view to reforms in the constitution, law, etc. Inflammatory speeches advocating tumultuous protests against some particular grievance in the administration of law, etc., would come within this branch of sedition. In this form, sedition is often coupled with conspiracy, unlawful assembly or riot. If these additional elements are not present, it supplements the law of incitement to commit crime; a speech or writing seditious in this sense need not amount to incitement. In *R.* v. *Burdett* (1821), 4 B. & Ald. 95, 314, the defendant wrote a violent letter of protest against the so-called Battle of Peterloo in which troops had been used to disperse a public meeting. The judge directed the jury that they were to consider whether the paper contained a sober address to the reason of mankind, or whether it was an appeal to their passions, calculated to incite them to acts of violence and outrage; if it was of the former description it was not a seditious libel, if of the latter it was. The law was well expressed by Littledale, J., in *R.* v. *Lovett*, *supra*, when he said that if a paper, published by the defendant, has a direct tendency to cause unlawful meetings and disturbances and to lead to a violation of the laws, it is a seditious libel.

It would appear to be necessary to show that there was a tendency to cause violence or disturbances though it may be sufficient if the tendency is to cause an unlawful assembly, even if a peaceable one. But there is no discoverable precedent for the case where the tendency is to cause other crimes; for example, non-payment of taxes.

(4) *Ill will and hostility between classes.*

In the definition of sedition given by Stephen in his "Digest of the Criminal Law" it is said to be a seditious intention to promote feelings of ill-will and hostility between different classes of His Majesty's subjects. The definition was approved by Cave, J., in *R.* v. *Burns, supra*, and in the Irish case of *R.* v. *M'Hugh* [1901] 2 I.R. 569, 587. But here again a direct precedent is wanting. *O'Connell* v. *R.* in the House of Lords (1844), 11 Cl. & F. 155, is often quoted as an authority, and Stephen relies, apparently, for this part of his definition on the words of Tindal, C.J., in giving the advice of the judges to the House. That case is only a case of conspiracy, not of sedition. At p. 234 of the report Tindal, C.J.'s words are: "There can be no question but that the charges contained in the first five counts do amount, in each, to the legal offence of conspiracy, and are sufficiently described therein. There can be no doubt but that the agreeing of divers persons together to raise discontent and disaffection amongst the liege subjects of the Queen; to stir up jealousies, hatred and ill-will between different classes of Her Majesty's subjects; and especially to promote amongst Her Majesty's subjects in Ireland, feelings of ill-will and hostility towards Her Majesty's subjects in the other parts of the United Kingdom . . . form a distinct and definite charge against the several defendants of an agreement between them to do an illegal act." It is, of course, familiar law that the object of a conspiracy need not be criminal or even unlawful in order to make the conspiracy a criminal one: it is the agreement which is the essence of that offence and it is only that offence for which *O'Connell* v. *R.* is an authority. The Criminal Libel Act, 1819, does not refer directly or indirectly to this fourth alleged head of sedition, nor to the fifth.

Stirring up and creating ill-will between classes was the subject of a criminal charge in *R.* v. *Leese and Whitehead* (*The Times*, 22nd September, 1936), the two classes being Jews and non-Jews. The defendants had baited Jews in an abusive and insulting manner. But the charge was not of seditious libel or seditious words but of public mischief, a common law offence which was resurrected in *R.* v. *Manley* [1933] 1 K.B. 529. A public mischief was held to have been committed.

(5) *Discontent and disaffection.*

Stephen's definition also comprehends an intention to raise discontent or disaffection amongst His Majesty's subjects. It would seem that the word disaffection is not the same as dissatisfaction but that it implies something in the nature of a diminution of allegiance to the King or loyalty to the country. No precedent can be discovered for this fifth type of sedition even in respect of disaffection as contrasted with mere discontent. The Aliens Restriction (Amendment) Act, 1919, s. 3 (1), makes it a crime for an alien who attempts or does any act calculated or likely to cause sedition or disaffection amongst any of His Majesty's forces or the forces of His Majesty's allies *or* amongst the civilian population. But one can hardly argue from this express statutory provision that such conduct would not be criminal and seditious at common law, for the object of the Act of 1919 may be to impose a heavier punishment (ten years' penal servitude) on aliens than sedition, as a common law misdemeanour, permits.

BARRISTERS AND WAR SERVICE.

PRACTISING members of the Bar, aged thirty-five years or upwards, who have registered and have not received an enlistment notice, or may hereafter register under the National Service (Armed Forces) Acts, are urgently requested to give immediate notice of the fact, and of their addresses, to the secretary of the Bar Council, 5, Stone Buildings, Lincoln's Inn, W.C.2, for the information of the committee which has been appointed to consider what deferments should be recommended for the purpose of safeguarding the efficient administration of justice. The secretary will address a further communication to members of the Bar responding to this request. The matter is urgent as the time for decision is short.

The attention of barristers is further called to the fact that applications by them for deferment in the case of clerks whose services they regard as essential for the above-mentioned purpose, and who are aged thirty-five years or upwards, and who have registered but have not received an enlistment notice, are among those which will now be given consideration, and such applications by barristers should be forwarded to the secretary of the Bar Council for reference to the same committee.

Criminal Law and Practice.

DIPLOMATIC PRIVILEGE.

THE presence in this country of a considerable number of persons entitled to diplomatic privileges (see the Diplomatic Privileges (Extension) Act, 1941) makes the recent case of *R.* v. *Kent* [1941] 28 Cr. App. R. 23 of more than passing interest.

The appellant had been sentenced by Tucker, J., to seven years' penal servitude for offences against the Official Secrets Acts, 1911 and 1920, and offences of larceny. They were alleged to have been committed while he was employed as a code clerk at the embassy of a foreign power. His dismissal from that employment took place on the same day as his subsequent arrest. On the same day, or on the previous day, the ambassador of the foreign power which had employed the appellant waived any claim of diplomatic privilege.

The privilege claimed by the appellant was that he could not be tried for an offence committed while he was a diplomatic agent or a member of the diplomatic staff, and was not liable to arrest. He claimed that he was entitled to diplomatic privileges not only throughout the whole of his employment, but also for a reasonable time thereafter, and he argued, without the assistance of counsel, that a reasonable time was sufficient time to enable him to make arrangements to leave the country freely, as he entered it freely.

He relied on a passage in Davey, L.J.'s judgment in *Musurus Bey* v. *Gadban* [1894] 2 Q.B. 352, at p. 362, where he said that Musurus Bey was alleged in the reply to have remained in England only for the purpose of making the necessary preparations for his departure, and no longer than was necessary for the purpose. He added that there was nothing from which it could be inferred that he stayed longer than a reasonable time, and that the privilege therefore continued until his return to Turkey.

The second point that he made was that the privilege was an independent one, and could not be waived by the ambassador, or at any rate could only be waived by the ambassador with the consent of his Government. He relied on *In re Suarez* [1918] 1 Ch. 176, where Swinfen-Eady, L.J., and Warrington, L.J., held that "an ambassador or public Minister can with the consent of his Government effectually waive his privilege."

With regard to these two cases, the Lord Chief Justice said that neither of them was any authority for the proposition that, when the person claiming the privilege had been dismissed and the ambassador for the country had waived the privilege, notwithstanding that waiver the official could still claim to be entitled to the protection of it.

His lordship added that the appellant had quite rightly stated that the privilege was derived from the comity of nations, but the comity of nations would be a strange source for the doctrine, for it would lead rather to the embroilment of nations than to their comity if, notwithstanding the dismissal of the person claiming the privilege, and waiver of the privilege, he was still to be entitled, contrary to the interests of the country which he had been serving, to commit criminal offences with impunity. There was, in their lordships' judgment, no authority for the proposition that in spite of waiver he could claim immunity from a criminal charge.

On the general subject of diplomatic privilege, his lordship said that it was derived from the privilege of the ambassador, and ultimately of the State which sent the ambassador. Before it was stated in the Diplomatic Privileges Act, 1708, it was originally based on the comity of nations. His lordship referred to *Engelke* v. *Musmann* [1928] A.C. 433; *Dickinson* v. *Del Solar* [1930] 1 K.B. 376; *Taylor* v. *Best* (1854), 14 C.B. 487; and *Marshall* v. *Critcio* (1808), 8 East 447.

This new decision is an important qualification of the important principle which was clearly enunciated by Swinfen-Eady, L.J., in *In re Suarez, supra*, at p. 193, in expounding a passage in Lord Talbot's judgment in *Barbuit's case*, Cas. t. Talb. 281, that "the privilege being for the sake of the Prince by whom an Ambassador is sent, the Ambassador cannot renounce such privilege and protection without the consent of the Government which sent him.

Dickinson v. *Del Solar* [1930] 1 K.B. 376 is an interesting case because it shows how the law had been laid down prior to the present decision in *R.* v. *Kent, supra*. The defendant to the action, which was based on the negligent driving of a motor car causing personal injuries, was the First Secretary to the Peruvian Legation. The Minister had forbidden the defendant to rely on diplomatic immunity, as the collision had occurred when the car was being used, not for official, but for private purposes. Lord Hewart, C.J., quite clearly stated in that case that the privilege was the privilege of the Sovereign by whom the diplomatic agent was accredited, and might be waived with the sanction of the Sovereign or of the official superior of the agent.

It would appear from this that even if the defendant in *R.* v. *Kent, supra*, had not been dismissed by the Minister, the Minister's waiver of the diplomatic protection would, even without his Sovereign's consent, have been sufficient to bring the defendant before the jurisdiction of the court. The matter is by no means free from difficulty, one of the reasons being that the law on the subject of diplomatic immunity from criminal process was as recently as 1909 in such a vague state that the learned authors of the title on Criminal Law in "Halsbury's Laws of England"

were able to state that though this diplomatic immunity was asserted by writers on international law, it was not sanctioned by the English courts or by any authority on English criminal law ("Halsbury, Laws of England," 1st ed., vol. 9, p. 245). This statement is repeated in the present edition of Halsbury, at p. 25 of vol. 9. Apparently this immunity was assumed to be valid in *R.* v. *Kent*, *supra*, but when the point arises again some interesting argument should be anticipated.

A Conveyancer's Diary.

MASON v. WARLOW.

In a recent issue of this Journal (85 Sol. J. 225) there is the first report that I have seen of a case (*Mason* v. *Warlow*) on the realty provisions of the Limitation Act, 1939. Such a case is an event in legal history, although the subject-matter was of no importance except perhaps to the parties themselves. And it may be as well to pause for a moment amid the stresses of war to consider its simple and modest facts.

The plaintiff was the owner of a cottage, and of a shed in the adjoining garden. On 30th March, 1921, the plaintiff's predecessor in title had let both cottage and shed to the defendant for 6s. a week. There was a tenancy agreement which provided that the tenancy should be terminable by either side by four weeks' notice in writing. Some time in 1923 the defendant gave up possession of the cottage, but not of the shed, and used the shed till September, 1940, by putting his motor car in it or storing other property there. After vacating the cottage he never paid any rent for the shed. There seems to have been no evidence of the circumstances in which the defendant managed to get into this happy situation.

In September, 1940, the plaintiff ejected the defendant's property from the shed, and on 1st October, 1940, gave the defendant a notice to quit which purported to be given under the old agreement of 1921. Having apparently got no satisfaction (although the defendant's chattels seem to have already been ejected), the plaintiff then launched proceedings for possession of the shed. Naturally, the defendant counterclaimed for damages for trespass. The learned county court judge at Builth dismissed the action and gave the defendant £20 damages on the counterclaim. The plaintiff appealed to the Court of Appeal. By doing so he did himself no good at all, but has given the public an interesting little reportable case. We are all much indebted to him; so many cases on limitation are about encroachments and trespasses so trivial that the world never hears of them, and we are grateful for any that do go to a court whose judgments are reported. But that will be of little comfort to the plaintiff, I fear.

The first question to be asked in all cases about limitation is "when did the cause of action accrue?" That depends, however, on the relations of the parties. From 1921 to 1923 they were landlord and tenant of both cottage and shed, the rent was being paid and no notice to quit had been served. So, obviously, no cause of action had accrued earlier than the moment at which the defendant moved out of the cottage. The report which we so far have is not as full as it might be, but apparently the plaintiff's counsel suggested in the Court of Appeal that the tenancy of 1921 continued in respect of the shed and was only terminated by the notice of October, 1940. There does not seem to have been any evidence to support this contention, and it was intrinsically improbable. It was duly rejected by the court. But if it had been correct in fact it would have involved the victory of the plaintiff. The action was one to recover land, and it could not be barred unless the statutory period had elapsed after the moment at which the plaintiff could have first succeeded in an action for the recovery of land. But mere non-payment of rent does not of itself give a landlord any such remedy. Of course, in a properly drawn lease or tenancy agreement there will be a provision entitling the landlord to re-enter if the rent is not paid, and in such case time will run in favour of the tenant from the date on which the landlord could first have re-entered. But time runs only against the enforcement of each particular right of forfeiture, and if there is default on a series of half-yearly instalments of rent the landlord can always take advantage of one of the latest defaults: see, for example, *Barratt* v. *Richardson* [1930] 1 K.B. 686. Time normally only runs against a lessor from the moment when his reversion becomes an interest in possession through the surrender or expiration of the term.

But the Legislature has found it necessary to provide specially for certain rather elementary sorts of lessor-lessee relationship. Those are tenancies from year to year and tenancies at will. Both these classes of interest call for special treatment, because of the vagueness of the relation and its incidents: in the absence of a definite rule tenants might be in possession for very long periods without paying rent for one reason or another, and thus, years afterwards, the landlord could come down on them and demand possession praying in aid the rightfulness of the tenant's possession. Such a state of affairs would, of course be quite contrary to the spirit of the statutes of limitation.

The special treatment is to be found in s. 9 (1) and (2) of the Limitation Act, 1939, which respectively replace ss. 7 and 8 of the Act of 1833. For the purposes of the Act, every tenancy at will is deemed to have expired a year from the day on which it started and time runs from the date of notional expiry. The practical effect of this rule is usually a curious one, viz., that an occupier who is only just not a trespasser may be found to have had a tenancy at will (usually by reason of some express or implied admission that his holding is permissive and not tortious), so that it takes him thirteen years to acquire a title instead of the twelve that it takes a trespasser. Section 9 (1) would generally only operate where the tenant has never paid rent at all, as the chances are that any payment of rent would convert the tenancy into a tenancy from year to year or for some smaller period by reference to which the rent was calculated. But, of course, if there were a payment of rent that did not prevent the tenancy continuing to be one at will, the moment at which time would start to run would be postponed by s. 23 until the date of the last such payment. Presumably, if the only payment was one in the first year, time would run from the end of the first year, since s. 23 is a provision for *extending* periods of limitation (see s. 1).

Section 9 (2) deals with what one may shortly call "periodical tenancies," of which tenancies from year to year are the commonest. But the subsection would cover, for example, a tenancy from week to week (see *Doe d. Lansdell* v. *Gower* (1851), 7 Q.B. 539). On the other hand, it does not cover any periodical tenancy where there is "a lease in writing." The word "lease" is not defined for the purposes of the Act, but I do not think it would here be construed restrictively as meaning a lease under seal. Consequently, s. 9 (2) does not apply except to oral or implied periodical tenancies, which is, of course, in accordance with the intention to protect persons who occupy, for a long time, under vague arrangements. If the terms of a periodical tenancy are made clear and definite by being reduced into writing, there is no reason for special provision and the period will run only from the determination of the tenancy by notice. Where the subsection does apply, time runs from the end of the first year or other period unless any rent has later been received, in which case it runs from the last payment of rent. The rent point is in this case expressly included in s. 9 and is not left to s. 23 as it is with tenancies at will.

Returning to the facts of *Mason* v. *Warlow*, it is clear that if the 1921 arrangement had gone on after 1923 time would not have started to run till the notice to quit dated October, 1940, since the 1921 arrangement was in writing. But the court felt unable to say that the arrangement of 1921 had continued after 1923 so far as concerned the shed, and, indeed, such a thing would not be very likely. There does not seem to have really been any evidence of what transpired in 1923. Accordingly, there were three possibilities: either the defendant remained in possession as a trespasser, in which case time would have run in his favour in twelve years (i.e., by 1935); or he was a tenant from year to year or for some lesser period by virtue of an oral or implied arrangement made in 1923, in which case time would have run in his favour in not exceeding thirteen years (i.e., by 1936); or he was a tenant at will, in which case also thirteen years would have given him a good title. Goddard, L.J., seems to have thought that there was a periodical tenancy, and that may have been in accordance with the evidence. MacKinnon, L.J., contented himself with saying that the tenancy (if any) must have fallen within s. 9 (1) or (2), and that the action was barred in either case, du Parcq, L.J., is reported merely to have "agreed." The case is not, of course, fully reported, and it is to be hoped that when the Law Reports start coming out again it will have a place in them. On the present report, I should have been inclined to say (with all respect to Goddard, L.J.) that the relation was that of a tenancy at will. It is reasonably clear that the defendant had some sort of vague permission to go on using the garage, and there is nothing at all to indicate the terms on which he held. The onus was clearly on the plaintiff to establish that the position was otherwise, and as he failed to do so the law duly protected long possession.

Books Received.

The War Damage Act, 1941, and the War Risks Insurance Act, 1939, Part II (Commodity Insurance Scheme). By G. Granville Slack, B.A., LL.M., of Gray's Inn, Barrister-at-Law, and special contributors. With pocket supplemental service. 1941. Royal 8vo; pp. viii and (including Index) 446. London: Butterworth and Co. (Publishers), Ltd. Price 15s., postage 11d. extra.

A Short Review of the War Damage Act, 1941. pp. (including Index) 16. London: The Incorporated Society of Auctioneers and Landed Property Agents. Price 6d. net. (Subject to an application on business notepaper accompanied by a stamped addressed envelope, a copy of the booklet will be supplied free of charge to any member of the legal profession for his personal use.)

Stock Exchanges Ten-Year Record. Thirty-third issue. 1941. London: Fred. C. Mathieson & Sons. Price 20s. net.

Our County Court Letter.

TENANCY BY ELEGIT.

In a recent case in the Worcester Sheriff's Court (*J. C. Baker, Ltd.* v. *Finkelstein*) the plaintiffs had recovered judgment for £120 12s. 6d. and sought to enforce it, with interest and costs, by means of a writ of choice. The defendant had been subpœnaed to attend but did not do so. Evidence was given by a witness who was present in December, 1939, on the completion of the purchase by the defendant of a house in Worcester. A rating officer produced the rate book, which showed that on the 5th June, 1940, the defendant was the owner of the house, which was assessed at £30 gross and £22 rateable value. According to the rate books, the defendant had no other property in the city. The deputy Under Sheriff explained to the jury that their duty was to decide what lands, etc., in the city the defendant possessed on the 5th June, 1940, or at any time afterwards. The jury found that the defendant was possessed of the property specified, and signed an inquisition causing the property to be delivered to the plaintiffs, and held by them until the judgment debt with interest, costs of execution (£2 2s.) and costs of an inquisition, be paid. It is to be noted that a judgment creditor, under a tenancy by elegit, is in a position analogous to that of a mortgagee in possession. He is therefore accountable for rents and profits and must deliver up possession on his claims being satisfied.

DISMISSAL OF BREWERY REPRESENTATIVE.

In *Allen* v. *Balsam* recently heard at Plymouth County Court, the claim was for £125 as damages for procuring a breach of the plaintiff's contract of employment. The plaintiff had formerly been employed by Norman and Pring, Ltd., who were the proprietors of the City Brewery, Exeter. In December, 1939, the plaintiff was appointed as a representative to work under the defendant at Plymouth, where the defendant was the district manager. The plaintiff's salary was £250 a year, and the appointment was advertised as "permanent." A fidelity bond was mentioned as a condition of the employment, but no steps were taken to obtain one for two months. The defendant then insisted on filling in the proposal form himself. The application for a fidelity bond was refused, but the defendant assured the plaintiff that it would not result in his losing his position. Nevertheless the defendant was afterwards dismissed, and received a month's salary in lieu of notice. The directors gave the plaintiff no real reason for his dismissal, but asked if he would pay a proportion of his salary as a personal fidelity bond. The plaintiff agreed to do so, and the directors stated that they would communicate their decision in due course. Subsequently the plaintiff received a letter of dismissal, alleging that he was unpopular with customers and had given discount contrary to the rules of the company. The plaintiff's case was that the money for rebates was given him by the defendant. The plaintiff admittedly had had judgment given against him, for an amount payable at 4s. a month, and his only reason for not entering this in the proposal form was the lack of room. A submission was made, for the defendant, that he had nothing to do with the plaintiff's dismissal. The latter was due to the failure to obtain a fidelity bond. Subsequent inquiries had revealed the circumstances which had induced the directors to dismiss the plaintiff. Without hearing evidence for the defendant, His Honour Judge Lias gave judgment in his favour, with costs.

MILL STREAM DIVERSION.

In *Hood* v. *Pickering Watercress Co., Ltd.*, recently heard at Scarborough County Court, the claim was for £200 damages and for an injunction against the obstruction of a mill stream. The plaintiff was the owner of the Upper Costa Mill, Middleton, the water to which had flowed for generations via Costa Beck. This was an artificial stream made to serve the plaintiff's mill and another lower down. Ten years ago the defendants had taken a lease of adjoining land, and, in order to irrigate their watercress beds, they had diverted water from the Beck. This had diminished the flow of water to the mill of the plaintiff, whose case was that he had allowed the defendants a trickle, but this had grown to half a mill stream. By the end of 1940 the mill was only able to work half time. The defendants' case was that the diminution in the flow was due to the plaintiff's failure to repair the bank and to clear the stream of weeds and silt. Moreover, there had been delay in bringing the claim, whereby the plaintiff was disentitled to relief. His Honour Judge Kingsley Griffith observed that the plaintiff should not be penalised for allowing latitude to the defendants. There was evidence of obstruction, which entitled the plaintiff to £75 damages and an injunction. Judgment was given accordingly, with costs.

It was held in *Baily and Co.* v. *Clerk, Son and Morland* [1902] 1 Ch. 649 that in the case of an artificial stream, of unknown origin, the inference from the user of the water and other circumstances may be that the channel was originally constructed upon the terms that all the riparian proprietors should have the same rights as if the stream had been a natural watercourse. Obstruction of a natural watercourse is a nuisance. See *Orr-Ewing* v. *Colquhoun* (1877), 2 App. Cas. 839.

To-day and Yesterday.

LEGAL CALENDAR.

2 June.—Among the more curious cases in the law reports one may reckon *May* v. *Burdett*, 9 Q.B. 101, determined on the 2nd June, 1846. The plaintiff alleged that the defendant "wrongfully and injuriously kept a certain monkey knowing it to be of a mischievous and ferocious nature," and that it was dangerous to allow it to be at large. This animal one day "did attack, bite, wound, lacerate and injure" the plaintiff Sophia May, whereby she "was greatly terrified and alarmed and was sick, sore, lame and disordered." Lord Denman gave judgment against the owner of the monkey.

3 June.—On the 3rd June, 1725, Lord King recorded in his diary: "About ten o'clock I waited on the King to have two Bills signed, the one for Eyre to be Chief Justice of the Common Pleas, the other for Gilbert to be Chief Baron, and as soon as I left him he went on his voyage to Hanover. And inasmuch as several of the nobility were to wait on him to Greenwich, so that they could not attend me, according to custom, to Westminster Hall, I did from thence take an occasion to go privately to Westminster Hall, which I did this day, being a day of motions. I have took the oath of a Chancellor, which the Clerk of the Crown read, and the Master of the Rolls held the book."

4 June.—On the 4th June, 1735, four criminals were hanged at Tyburn. John Sutton for stealing a silver watch, William Hughes, a soldier, who had shot his mother dead in her bed, Elton Lewis who had murdered his aunt, and Samuel Gregory, who had taken a part in breaking into a farm at Edgware where the farmer was robbed and his maid ravished. Even at the last moment at the gallows Gregory forced a laugh.

5 June.—On the 5th June, 1888, Sir Charles Bowen was sworn in as a judge of the Court of Appeal. The work there suited his delicate mental equipment a good deal better than that which he had had to handle in the Queen's Bench Division. It is on his work thereafter that his judicial reputation rests. The law was in a period of transition and he helped to guide it into the new channels. He had not been a great success as a judge of first instance, especially in jury cases, but in the Court of Appeal the elegance of his language, his subtlety and his powers of refined distinction had full scope. Lord Esher, who was then Master of the Rolls, once said of him: "His knowledge was so complete that it is almost beyond my powers of expression. His reasoning was so extremely accurate and so beautifully fine that what he said sometimes escaped my mind, which is not so finely edged."

6 June.—Sir Maurice Hill died at the age of seventy-two on the 6th June, 1934, four years after his retirement from the Bench. The President of the Admiralty Division, where he had done such great work, took the step, unusual in the case of a judge already resigned, of pronouncing a eulogy on him at the next sitting of the court. Before the last war he and his brother, an outstanding figure in the shipping world, drafted the legal forms necessary to operate at short notice a national scheme of war risk insurance, and when war came the scheme which he launched did much to save the country's food supply. He became a judge in 1917 and his decisions profoundly affected the maritime laws of every civilised country. He disliked the divorce work linked so oddly with the Admiralty jurisdiction and once spoke of himself as sitting "with one foot in the sea and one in the sewer."

7 June.—On the 7th June, 1792, Captain John Kimber of the "Recovery" engaged in the African slave trade, was tried at the Old Bailey for the murder of a negro girl. The surgeon and the third mate told a horrible story of how when she was ill and could not eat properly, the captain had her hung up by her arms or legs and beat her so severely that she died. Nevertheless the jury acquitted him without hesitation and the witnesses were committed to take their trial for perjury. The Duke of Clarence was present throughout the hearing and behaved in a very unseemly way, smiling, shaking his head and winking at the battle of wits between the counsel and witnesses, even when the most atrocious acts of wanton barbarity were related.

8 June.—Sir William Lee became Chief Justice of the King's Bench on the 8th June, 1737, succeeding Lord Hardwicke.

The Week's Personality.

When Sir William Lee became Chief Justice of the King's Bench in succession to his friend Lord Hardwicke, promoted to be Chancellor, some people expected little from him, but actually he acquitted himself very creditably indeed. Even the rather spiteful pen of Lord Campbell admitted that "his intentions were ever most pure and upright, his temper was well disciplined; his manners were bland . . . his decisions between the parties litigating before him were substantially just." Lord Hardwicke himself called him "an able and most upright magistrate and servant of the Crown and public," while his reporter Burrow said of him that "the integrity of his heart and the caution of his determination were so eminent that they never will, perhaps never can, be

excelled." The fact was that as a puisne judge he had been outshone by his eminent predecessor and only as Chief Justice did he have the scope to display to full advantage his thorough knowledge of the common law. Moreover he had read widely and carefully beyond the limits of professional literature. He was jovial in temperament, thought good cheer and a "merry, honest wife," the best sort of medicine and hospitality, the best sort of charity. He died in 1754, enjoying the highest reputation with his contemporaries. He had been twenty-four years on the Bench, first as a puisne and then as Chief Justice.

Notes of Cases.

JUDICIAL COMMITTEE OF THE PRIVY COUNCIL.

Hall *v.* **Kingston and Saint Andrew Corporation.**

Viscount Sankey, Lord Atkin, and Luxmoore, L.J.
10th February, 1941.

Local Authority (Jamaica)—Limitation of action—Protection only to members and employees of authority—Public Health Law, Jamaica, 1925, *ss.* 89 (1) (2), 223.

Appeal from a decision of the Supreme Court of Jamaica.

The plaintiff was run down and injured by a cart marked with the initials of the defendant corporation, which was driven negligently by one of their employees. The corporation alleged that the cart was being driven on behalf of the council of the corporation in execution of duties imposed on the council by s. 22 (2) (*a*) of the Public Health Law, 1925, of Jamaica; that the action was improperly constituted, and that the council and not the corporation were the proper defendants; that in any event as the corporation were acting under s. 22 (2) (*a*) the action was barred by s. 89 (1) and (2) of that Law in that no proper notice of action was given, the amount of damages claimed was not specified, and the action was not begun within three months after the accident. Seton, J., entered judgment for the plaintiff for £308 19s. 6d., with costs, and the corporation appealed. The Court of Appeal held that, as the cart was being used in pursuance of duties imposed by the Law of 1925, it followed that whether the employers of the driver were the corporation or the council, the employers' rights and liabilities were governed by the Law of 1925. They therefore held that the action was out of time because the requirements of s. 89 (1) and (2) had not been fulfilled, and gave judgment for the defendants. The plaintiff now appealed. (*Cur. adv. vult.*)

LUXMOORE, L.J., giving the judgment of the Board, said that s. 89 (1) provided that no action "shall be instituted against any member . . . or employee of . . . or any local board in respect of any act done in pursuance . . . of the Public Health Law, 1925, until the expiration of one month's notice in writing of such intended action given by the person complaining to the person concerned specifying the act . . . complained of and the . . . damages claimed therefor." By s. 89 (2) the action was to be begun within three months after the thing done. Subsection (1) on its true construction appeared to their lordships to afford protection to persons only and not to bodies corporate or incorporate. The notice required was to be given to the person concerned. Section 22 of the Law of 1925 enacted that every local board should provide a service of sanitary carts and scavengers. At all material times the council of the Kingston and St. Andrew Corporation were not a corporation; nor were they now incorporated. They were a body set up by the Kingston and St. Andrew Corporation Law, 1931, s. 9 (1), which provided that the corporation should be capable of acting by the council which should exercise all powers vested in the corporation or the council by the Law of 1931 or otherwise. Section 223 of the Law of 1931 provided that "all actions . . . against the corporation or any person . . . for anything done in pursuance . . . of this Law shall be commenced within six months after the act committed . . . and notice . . . of such action . . . shall be given to the council member or person against whom it is intended to bring such action . . . one calendar month beforehand." The evidence proved conclusively that the cart was the property of the corporation and its driver their servant, and that it was being driven in circumstances which rendered the corporation and not the council liable. Further, s. 223 did not afford any protection to the corporation because there had been no disregard of any of its provisions. The appeal should be allowed.

COUNSEL: *Pritt*, K.C., and *Colombos*. There was no appearance by or for the corporation.

SOLICITORS: *Hy. S. L. Polak & Co.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

According to *The Times* for the first time in over 200 years the Lord Advocate (represented by the Solicitor-General for Scotland, Mr. J. S. C. Reid, K.C.) made an appearance in the House of Lords recently without being a party to the case. The Solicitor-General for Scotland said that, while he was prepared to answer any questions or give any explanation which their Lordships desired, the Lord Advocate did not wish his appearance in such circumstances to be taken as a precedent.

COURT OF APPEAL.

Stockholms Enskilda Bank A/B *v.* **Schering, Ltd.**

Greene, M.R., MacKinnon and du Parcq, L.JJ.
29th January, 1941.

Emergency Legislation—Trading with the Enemy—German company's debt to Swedish bank—English Company surety—Collateral undertaking by surety to acquire debt by instalments—Repayment at higher rate obligatory on German company if instalments unpaid—Payment of instalments a "benefit" to German company—Trading with the Enemy Act, 1939 (2 & 3 Geo. 6, c. 89), s. 1 (2).

Appeal from a decision of Hawke, J.

The plaintiff bank agreed by a contract made in February, 1936, to place reichsmarks to the value of £84,000 at the disposal of a German company who were to pay the bank £50,400 for them, which represented a discount of eight shillings in the pound. Exchange difficulties were likely to make payment of that sum in sterling by the German company impossible. That company had two subsidiary companies, one Indian and one English (the defendants). The contract, which was between the bank, the German company and the two subsidiaries as sureties, further provided, as a means whereby the necessary sterling should be furnished by one or other of the subsidiaries, that they should acquire by instalments from the bank their claim against the German company. The dates and amounts in sterling of the instalments were specified. The subsidiaries were in effect agreeing to purchase the German company's debt to the bank by instalments. If the subsidiaries defaulted in an instalment on the due date the German company were to lose a proportionate part of the discount which they enjoyed in the purchase of the reichsmarks, so that default in the purchase of their debt to the bank by instalments would result in the German company's debt being raised to the £84,000, less payments already made. The bank were empowered to call in the debt immediately if the German company or one of the sureties became bankrupt or sought an arrangement with their creditors. The effect was that the subsidiary companies were sureties for the debt and also principals under an obligation to purchase the debt. The contract now sued on was between the bank and the sureties and contained a similar clause for the purchase of the German company's debt. The sureties' liability was in no case to exceed £50,400. Under the clause specifying dates of payment of instalments £3,360 was payable on a certain date, but as it remained unpaid the bank now sued the English company, claiming payment. The defendants contended that to pay that sum would be an offence of trading with the enemy within the meaning of s. 1 of the Trading with the Enemy Act, 1939. By s. 1 (2) ". . . a person shall be deemed to have traded with the enemy—(*a*) if he has had any commercial . . . dealings . . . for the benefit of, an enemy . . ."

Hawke, J., decided for the defendants; the bank appealed.

GREENE, M.R., said that it was argued for the plaintiffs that a narrow construction should be placed on the words "for the benefit of an enemy," that was, so as to embrace only cases where a device was adopted to convey a benefit to an enemy and not *bona fide* pre-war financial transactions merely because one of the indirect results of them would be to benefit an enemy. The judgment of Lord Reading in *R.* v. *Kupfer* [1915] 2 K.B. 321 did not support that limited construction. The words "for the benefit of" were, on the contrary, wide enough to include any transaction which could truly be said to be for the benefit of an enemy. Payment of the instalment claimed would clearly be for the benefit of the German company. First, the effect of it would be to preserve the discount to that company. Secondly, it relieved that company *pro tanto* of their obligation to the bank. For that obligation to a neutral company would be substituted an obligation to an English company of which the details were not known but which could at any rate not be enforced during the war. As for the argument that the payment of the £3,360 would not operate to discharge the German company's obligation to the bank until an assignment to the sureties of the appropriate part of the German company's debt was made, the bank were not entitled to payment until such an assignment took place and it could never be that the bank were entitled to payment while the assignment was left in the air. The appeal must be dismissed.

MacKinnon and du Parcq, L.JJ., agreed.

COUNSEL: *Havers*, K.C., and *Valentine Holmes*; *Miller*, K.C., and *J. A. Wolfe* (for *M. Berkeley* on war service).

SOLICITORS: *Slaughter & May*; *Kenneth Brown, Baker, Baker.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

In re Ward: Public Trustee *v.* **Berry.**

MacKinnon, Clauson and Luxmoore, L.JJ. 2nd May, 1941.

Will—Construction—Gift for Furtherance of "educational or charitable or religious purposes for Roman Catholics"—Whether good charitable gift.

Appeal from a decision of Farwell, J. (*ante* p. 141).

The testator, who died in 1940, gave the residue of his estate to his trustees upon trust for sale and conversion, and after payment of debts he directed his trustees to stand possessed of the residue of the proceeds of such moneys "in trust to pay and transfer the

same to the Archbishop of Westminster or other the Head of the Roman Catholic Church in England for the time being upon trust that he shall forthwith in his absolute discretion devote the same to the furtherance of educational or charitable or religious purposes for Roman Catholics in the British Empire in such manner in all respects as he may think fit." The Public Trustee, as trustee of the will, by this summons asked whether the gift of residue constituted a good charitable gift.

Farwell, J., held that the gift failed for uncertainty, as, according to the true construction of the will, the Archbishop was empowered to apply the fund not only for educational purposes and for charitable purposes, but also under the words "religious purposes" for purposes which did not fall within the ambit of charitable purposes. He considered that the words "religious purposes" were wide enough to embrace purposes which were not charitable. The Archbishop of Westminster appealed.

MACKINNON, L.J., said that the decision in *Income Tax Commissioners* v. *Pemsel* (1891), A.C. 531, was the only one which seemed to him to be of value, as it laid down a general principle. Lord Macnaghten in that case said: "Charity in its legal sense comprises four principal divisions: trusts for the relief of poverty; trusts for the advancement of education; trusts for the advancement of religion; and trusts for other purposes beneficial to the community, not falling under any of the preceding trusts." He thought that the words of this will "upon trust . . . for the furtherance of educational or charitable or religious purposes" had precisely the same meaning as the first three categories in Lord Macnaghten's definition. The only difference seemed to be: (*a*) the use of the word "furtherance" instead of the word "advancement," and (*b*) while Lord Macnaghten's order of his categories was "relief of poverty," "education," and "religion," the testator's order was "education," "charity," and "religion." To his mind this made no difference, and he thought that the testator's words exactly fulfilled Lord Macnaghten's definition of a charitable trust. Accordingly, the residuary gift to the Archbishop was a valid charitable bequest and the appeal must be allowed.

CLAUSON, L.J., agreed, and said that it must be taken as settled, since *In re White*, (1893) 2 Ch. 41, that, in the absence of context enabling the Court to place some more extended meaning on the words "religious purposes," the phrase must be taken to mean "purposes conducive to the advancement of religion" and accordingly purposes the law recognised as charitable. He could not find any ground on which to hold that the will authorised the application of the fund to a purpose which though connected with religion was not conductive to the advancement of religion. The gift accordingly was confined within the strict limits of a charitable gift.

LUXMOORE, L.J., delivered a judgment to similar effect.

COUNSEL: *Harman*, K.C. and *C. D. Myles* (for *R. R. A Walker* on war service); *A. P. Vanneck*; *H. A. Rose*; *Danckwerts*.

SOLICITORS: *Witham & Co.*; *Walter Crimp & Co.*, for *Harold Michelmore & Co.*, Newton Abbot; *Treasury Solicitor*.

[Reported by Miss B. A. BICKNELL, Barrister-at-Law.]

CHANCERY DIVISION.

In re **Hutley's Legal Charge, Barnes** *v.* **Hutley.**

Morton, J. 30th April, 1941.

Emergency powers—Property charged under the Public Works Loans Act, 1875—Mortgagee makes default in payments—Possession taken by War Agricultural Executive Committee—Whether emergency legislation binds Crown as mortgagees—Whether compensation moneys comprised in security—Public Works Loans Act, 1875 (38 & 39 *Vict.*, *c.* 89), *ss.* 18, 21, 22, 23, 50—*Agricultural Credits Act*, 1923 (13 & 14 *Geo.* 5, *c.* 34), *ss.* 1, 2—*Courts (Emergency Powers) Act*, 1939 (2 & 3 *Geo.* 6, *c.* 67), *s.* 1 (2)—*Possession of Mortgaged Land (Emergency Provisions) Act*, 1939 (2 & 3 *Geo.* 6, *c.* 108), *ss.* 1, 2—*Compensation (Defence) Act*, 1939 (2 & 3 *Geo.* 6, *c.* 75), *ss.* 1, 2.

Originating summons.

By a legal charge made the 5th June, 1928, between the defendant of the one part and the plaintiff, as the secretary of the Public Works Loan Commissioners, of the other part, the defendant charged certain agricultural land in Essex to secure the sum of £5,625 advanced by the plaintiff as secretary of the Commissioners pursuant to the powers conferred by the Public Works Loans Act, 1875, and the Agricultural Credits Act, 1923. The defendant covenanted to repay the loan with interest "to the cashiers of the Bank of England (to the use of His Majesty his heirs and successors)." The benefit of the charge was expressed to be vested in the plaintiff on whom were conferred the powers commonly given to a mortgagee. The charge was expressed to be a recognised mortgage within the meaning of the Agricultural Credits Act, 1923, and to be in the form prescribed by the Loan Commissioners and was to have effect accordingly under the Public Works Loans Act, 1875.

In November, 1939, the greater part of the mortgaged premises were taken over for military purposes and the defendant defaulted in his payments under the mortgage. Subsequently, the military left the premises and the Essex War Agricultural Committee took possession under the Defence (General) Regulations, 1939.

The Agricultural Committee had paid £20 on account, but the compensation payable by reason of their occupation had as yet not been assessed. By this summons the plaintiff asked whether he was entitled to take possession of the mortgaged premises notwithstanding the provisions of the Court (Emergency Powers) Act, 1939, and the Possession of Mortgaged Land (Emergency Provisions) Act, 1939, without the leave of the court, and, further, whether the compensation payable under the Compensation (Defence) Act, 1939, was comprised in the charge and payable to the plaintiff.

MORTON, J., said that the Crown was nowhere expressly mentioned in the Courts (Emergency Powers) Act, 1939. But for the decision of Rowlatt, J., in *A.-G. for the Duchy of Lancaster* v. *Moresby* [1919] W.N. 69, he would have had no hesitation in holding that the Act did not bind the Crown, having regard to the well-known rule that, if an Act of Parliament would otherwise divest the Crown of its property, rights, interest or prerogative, it is not to be so construed as applying to the Crown unless the Crown is mentioned either expressly or by necessary implication. The matter had been considered by Wrottesley, J., in *A.-G.* v. *Hancock* [1940] 1 K.B. 427, who had come to the conclusion that the Act did not bind the Crown. He agreed with that decision. He was bound to choose between it and that of Rowlatt, J., in 1919. In the circumstances he held that the Act did not bind the Crown. There was no reason for thinking that the Crown was bound by the Mortgaged Land (Emergency Provisions) Act, 1939. The further question arose whether the debt secured by the charge was a debt owed to the Crown. Having regard to the provisions of the Public Works Loans Act, 1875, and in particular to ss. 18, 23, and 50, he had come to the conclusion that the debt was a debt owed to the Crown. When the plaintiff had gone into possession, which he intended to do forthwith, the compensation payable under the Compensation (Defence) Act, 1939, s. 2 (1) (*a*), was a right, interest or privilege which, under s. 22 of the Public Works Loans Act, 1875, would vest in the plaintiff as secretary of the Commissioners.

COUNSEL: *C. D. Myles; Melford Stevenson; R. W. Goff.*

SOLICITORS: *J. Conway Morris; Welch, Son & Algar*, for *Turner, Martin & Symes*, Ipswich; *E. F. Iwi*, for *Steed & Steed*, Sudbury.

[Reported by Miss B. A. BICKNELL, Barrister-at-Law.]

In re **Corbyn, Midland Bank Executor and Trustee Co., Ltd.** *v.* **A.-G. and Johnson.**

Morton, J. 6th May, 1941.

Charity—Bequest for training boys for the Navy and Mercantile Marine—Allowance to be paid to boys—Validity of gift—Purpose beneficial to the community.

Adjourned summons.

The testator gave all his residuary estate upon trust for sale and conversion and investment to form a fund to be used for the benefit of the boy or boys "as selected of the training ship 'Exmouth.'" The selected boy was to be educated and instructed and trained to become an officer in His Majesty's Navy or the British Mercantile Marine. The expenses of training, educating, clothing, supply of instruments and other necessaries for the efficient training, etc., to fit him or them for the career of an officer and gentleman were to be paid and each boy was to be given an allowance monthly of money to enable him to keep up the dignity and appearance of an officer and gentleman. The testator died on the 10th December, 1939, and this summons was taken out by the executor of his will to determine whether the gift was a valid charitable gift.

MORTON, J., said that the trust was one which might last for an indefinite period and would be bad as infringing the rule against perpetuities unless it was a charitable trust. Had it not been for the provision with regard to a monthly allowance, he would have been disposed to hold that this was a trust for the advancement of education within the meaning of the second heading set out in Lord Macnaghten's judgment in *Income Tax Special Purposes Commissioners v. Pemsel* [1891] A.C. 531. This was not a trust for the general education of the boys but for education in a particular branch of study. However, he could not come to the conclusion that the gift fell wholly under this second head. He held, however, that the trust was for purposes beneficial to the community within the fourth heading of Lord Macnaghten's judgment. As regards the training of boys to become officers in the Royal Navy, there could be no doubt that it was a purpose beneficial to the community. As regards the training of boys to become officers in the Mercantile Marine, that was a purpose also beneficial to the community. The Mercantile Marine was essential to the community in war-time and at all times unless and until this country produced all the food and other essentials of life. With regard to the provision of a monthly allowance, that was ancillary to the main purpose. It met the difficulty of a boy whose parents were poor. That provision did not bring the trust outside the bounds of a charitable trust. Accordingly, he declared the trust to be a valid charitable trust.

COUNSEL: *George Maddocks; Geoffrey Cross; Wilfrid Hunt.*

SOLICITORS: *Baddeley, Wardlan & Co.; Treasury Solicitor.*

[Reported by Miss B. A. BICKNELL, Barrister at-Law.]